

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ADIB K. TIMBUKTU and DENNICE
MOORE,

Plaintiffs,

v.

NEAL, EDWARD A. FLYNN, OFFICER
GREGORY HUNTER, CITY OF
MILWAUKEE DEPARTMENT OF
NEIGHBORHOOD SERVICES, and
BLUNT,

ORDER

Defendants.

On December 28, 2016, the Clerk of the Court issued a bill of costs to the plaintiffs based on the judgment entered against them. (Docket #93). On January 11, 2017, the plaintiffs filed a motion to “vacate” that bill. (Docket #94). Federal Rule of Civil Procedure 54(d)(1) provides that costs should be allowed to a prevailing party, in this case the defendants. Fed. R. Civ. P. 54(d)(1); *see* (Docket #88 and #89). The plaintiffs assert that they are indigent and cannot pay the costs. (Docket #94). The Seventh Circuit has read an indigency exception into Rule 54(d)(1). *Rivera v. City of Chicago*, 469 F.3d 631, 634 (7th Cir. 2006). This is not automatic simply because the losing party was granted leave to proceed *in forma pauperis*, however. It requires a threshold factual determination from the Court that the losing party is unable to pay the costs now or in the future. *Id.* at 635. The losing party must “provide the district court with sufficient documentation to support such a finding. This documentation should include evidence in the form of an affidavit or other documentary evidence of both income and assets, as well as a schedule of expenses.” *Id.* (citation and quotation omitted). The plaintiffs’ bare statements

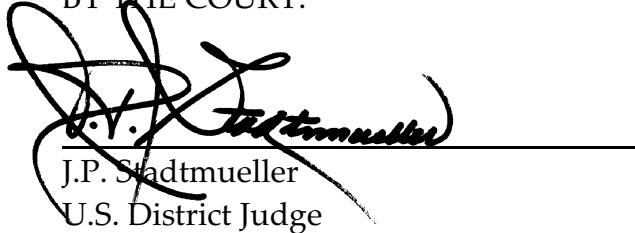
in the motion provide none of this evidence. The motion must, therefore, be denied.¹

Accordingly,

IT IS ORDERED that the plaintiffs' motion to vacate (Docket #94) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 12th day of January, 2017.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge

A handwritten signature of "J.P. Stadtmueller" is written over a solid horizontal line. Below the signature, the name "J.P. Stadtmueller" is printed in a standard font, followed by "U.S. District Judge" on a new line.

¹The plaintiffs' motion further states that "[t]he request for taxation is untimely." (Docket #94). The request by the defendants was timely filed in September 2013, when the case was closed. (Docket #90). The bill the plaintiffs seek to vacate was issued by the Clerk of the Court, not the defendants. In fact, the plaintiffs' instant motion appears untimely, but the Court has generously addressed it as it is otherwise deficient. See Fed. R. Civ. P. 54(d)(1) ("The clerk may tax costs on 14 days' notice. On motion served **within the next 7 days**, the court may review the clerk's action.") (emphasis added).